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Date: August 28, 2008  
Refer To: ENV-RCRA-08-177

Ms. Rebecca Kay  
Hazardous Waste Bureau  
New Mexico Environment Department  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, New Mexico 87505-6303

Dear Ms. Kay:

**SUBJECT: RESPONSE TO THE NEW MEXICO ENVIRONMENT DEPARTMENT  
AUGUST 8, 2008 NOTICE OF DISAPPROVAL OF SITE TREATMENT  
PLAN (STP) FISCAL YEAR 2007 (FY07) UPDATE AND REVISION 18.0**

In an August 8, 2008 letter, the New Mexico Environment Department's (NMED) Hazardous Waste Bureau issued a Notice of Disapproval for the Los Alamos National Laboratory proposed Site Treatment Plan (STP) Fiscal Year 2007 (FY07) Update and Revision 18.0. The Los Alamos National Security, L.L.C. (LANS) and the U.S. Department of Energy's National Nuclear Security Administration offer the following responses to each of NMED's comments.

**NMED Comment #1**

*Waste treatability group LA-W933 (lab packs) in Table 2.1-2 (page 4) of the Background Volume (BV) indicates that two shipments were made to Perma-Fix on May 21, 2007. According to the June 26, 2007 "Notice of Completion of Off-Site Waste Shipment Activities" (referenced by ENV-RCRA: 07-161) and associated manifests, only one shipment of labpacks was sent to Perma-Fix; the other was shipped to Diversified Scientific Services, Inc. (DSSI) in Kingston, TN. Revise the text in Table 2.1-2 to state that one of the shipments was sent to DSSI and not Perma-Fix.*

**LANL Response**

Background Volume Table 2.1-2 has been revised accordingly.

**NMED Comment #2**

*Waste treatability group LA-W925 (mercury wastes) specifies an administrative adjustment of 0.3398 cubic meters (m3). Reported administrative adjustments in past STP Updates have typically consisted of relatively insignificant volumes (i.e., 0.0001 m3 or 0.0004 m3). The Respondents must provide justification in Section 3.6 (Administrative Adjustments and Corrections) of the BV for an administrative adjustment that resulted in a volume of nearly two 55-gallon drum equivalents.*



### **LANL Response**

Waste item 2344996 with volume of 0.3398 m<sup>3</sup> was generated and stored at TA-55 prior to being transferred to TA-54. The STP data indicates that the volume for item 2344996 was inadvertently counted twice resulting in an additional volume of 0.3398 m<sup>3</sup>. An explanation of the administrative adjustment for LA-W925 has been added to the STP Background Volume Table 3.6-1.

### **NMED Comment #3**

*Waste treatability group LA-W935 (10-100 nCi/g waste) in Table 2.1-2 indicates that 16.656 m<sup>3</sup>, 51.4254 m<sup>3</sup>, and 4.372 m<sup>3</sup> were shipped to Materials & Energy Corporation (M&EC) on September 25, 2007, September 27, 2007, and June 20, 2007, respectively. According to the November 5, 2007 "Notice of Completion of Off-Site Waste Shipment Activities" (referenced by ENV-RCRA-07-254) and associated manifests and the July 25, 2007 "Notice of Completion of Off-Site Waste Shipment Activities" (referenced by ENV-RCRA: 07-177) and associated manifests, the Respondents indicate that the waste shipped was high activity waste which is assigned the Mixed Waste Inventory Record (MWIR) identification code LA-W934, not LA-W935. Revise the text in Table 2.1-2 to reflect that the shipments of 16.656 m<sup>3</sup>, 51.4254 m<sup>3</sup>, and 4.372 m<sup>3</sup> were coded LA-W934 and not LA-W935. The Respondents must also amend the correct total volumes in the "FY07 Annual Update (m<sup>3</sup>)" column in Table 2.1-2 for the two respective waste treatability groups. The Respondents must revise all other appropriate Tables and Sections that reflect this change. This includes, but is not limited to, Table 3.6-1 (Administrative Adjustments and Corrections) on page 19 of the BV and pages 26 and 35 in Attachment C of the Compliance Plan Volume (CPV).*

### **LANL Response**

In the 2007 Notice of Completion of Off-Site Waste Shipment Activities referenced above, LANS identified the 10-100 nCi/g wastes as LA-W934 High Activity Waste but also stated the waste would be reported in the next STP update as LA-W935 waste. LANS sent a separate notice dated March 11, 2008 proposing the creation of a new STP treatability group and stated that these waste stream activities would be reported as transfers in subsequent STP updates under the LA-W935 treatability group. NMED staff did not indicate any objection to these proposals, so LANS proceeded with reporting the waste as LA-W935. However, LANS will revise the STP to reflect the waste as LA-W934 waste. Further, until NMED approves the addition of the LA-W935 treatability group to the FY07 STP, LANS will report any subsequent shipments of 10-100nCi/g waste as LA-W934 waste.

### **NMED Comment #4**

*Waste treatability group LA-W935 (10-100 nCi/g waste) in Table 2.1-2 indicates that 51.4254 m<sup>3</sup> was shipped to Materials & Energy Corporation (M&EC) on September 27, 2007. According to the above-referenced Notice of Completion and its associated manifests, the Respondents notified NMED that this waste shipment was sent to PermaFix in Florida, not M&EC on the 27th of September. Also, the total net volume in Table 2.1-2 states the volume shipped on September 27, 2007 was 51.4254 m<sup>3</sup> while the total identified in the Notice of Completion is 51.6336 m<sup>3</sup>. Revise the text in Table 2.1-2 to reflect the accurate volume of waste shipped as well as the correct destination.*



**LANL Response**

Background Volume Table 2.1-2 has been revised to show the correct receiving facility for the September 27, 2007 shipment, i.e., M&EC. However, 51.4254 m<sup>3</sup> is the correct volume for the September 27, 2007 shipment. The discrepancy is with the volume reported in Table 2 of the November 5, 2007 "Notice of Completion of Off-Site Waste Shipment Activities" (ENV-RCRA-07-254). Table 2 erroneously listed one additional container that was not shipped. A corrected "Notice of Completion of Off-Site Waste Shipment Activities" for the September 27, 2007 shipment is being sent under separate cover. LANS regrets the error.

**NMED Comment #5**

*Table X.C.2.a.-7 (Proposed Extensions of Milestone Activity Compliance Dates) on page 4 of Attachment C in the CPV states the Revision 17.0 compliance date for milestone activity 3.1.5(A) (waste treatability group LA-W922, non-combustible debris) as "08/25/2003." The Respondents, however, proposed in the STP FY06 Update Revision 17.0 Proposal (ENV-RCRA: 07-043) a compliance date of "12/31/08" for this treatability group. This date was approved by NMED and thus made effective June 24, 2008 (see NMED letter to the Respondents dated June 24, 2008). Revise the column entitled "Revision 17 Compliance Date" in Table X.C.2.a.-7 in Revision 18.0 to indicate the date of 12/31/08, not 08/25/2003.*

**LANL Response**

LANS has scheduled the remaining volume of the LA-W922 waste for off-site shipment within the next two months and thus, the proposed extension for Activity 3.1.5(A) appears to be unnecessary. All references to LA-W922 in Table X.C.2.a.-7, (including the milestone dates in question) have been deleted entirely, making moot the issue on the proper date in the table.

**NMED Comment #6**

*Table X.C.2.a.-7 on page 4 of Attachment C in the CPV states the Revision 17.0 compliance dates for milestone activities 3.1.8(A) (waste treatability group LA-W917, compressed gases requiring scrubbing) and 3.1.9(A) (waste treatability group LA-W918, compressed gases requiring oxidation) as "08/09/2008." The Respondents, however, proposed in the STP FY06 Update Revision 17.0 (ENV-RCRA: 07-043) the compliance date of "08/28/08" for this treatability group. August 28, 2008 was the date approved by NMED on June 24, 2008 and is therefore the effective date. Revise the column entitled "Revision 17 Compliance Date" in Table X.C.2.a.-7 in Revision 18 to read 08/28/08, not 08/09/2008. (See the tables in Section 3.1.8 on page 19 and Section 3.1.9 on page 20 which reflect the correct dates.)*

**LANL Response**

Table X.C.2.a.-7 has been revised to include the correct compliance dates.

**NMED Comment #7**

*Table 2.1-2 ("FY07 MLLW Inventory Detailed Update by Treatability Group") on page 3 of the BV indicates a net volume of 0.0602 m<sup>3</sup> for waste treatability group LA-W918 (compressed gases requiring oxidation). However, page 19 in Attachment C states the net volume is 0.0758 m<sup>3</sup>. The Respondents must amend page 19 so that it correctly reports the net volume shown in Table 2.1-2.*



**LANL Response**

The reported volume for LA-W918 on page 19 of the LANL CPV has been corrected.

**NMED Comment #8**

*The Respondents propose an extension of one year for the compliance date for Activity 3.1.5(A) in Attachment C. According to Section X(C)(2)(a-d) of the Federal Facilities Compliance Order (FFCO), "when the Respondents propose a revision, they shall provide NMED a written proposal which includes:*

- (a) a detailed description of the proposed revision;*
- (b) the rationale for the proposed revision;*
- (c) the anticipated length of any delay in performance...; and*
- (d) ...a plan for implementing all reasonable measures to address the cause of the delay..."*

*In order for NMED to consider the proposed milestone compliance activity date change, the Respondents must provide, at a minimum, the following information:*

- 1. A description of the waste in the treatability group(s);*
- 2. A list of the EPA hazardous waste numbers associated with those wastes;*
- 3. A description of the treatment processes required for the treatability group(s);*
- 4. A full list of all the commercial facilities the Respondents contacted requesting treatment and acceptance of the treatability group(s); and*
- 5. All correspondence, formal or otherwise, between the commercial facilities, identified in item 4 above, including reasons for their denial of acceptance and treatment of the treatability group(s)."*

*Revise the Update providing the rationale and justification for the additional one year extension of the milestone activity compliance date.*

**LANL Response**

LANL has scheduled the remaining volume of the LA-W922 waste for off-site shipment within the next two months. The proposed extension for Activity 3.1.5(A) appears to be unnecessary, and the date has been reset in the LANL CPV to the FY06 STP approved date of 12/31/2008. If LANL cannot ship the waste as anticipated, a timely request for an extension will be made to NMED.

**NMED Comment #9**

*The Respondents submitted the STP FY07 Update Revision 18.0 Proposal on May 1, 2008. However, the Respondents' submittal did not include NMED's modifications (see NMED Public Notice No. 08-05 dated May 21, 2008). NMED received the Respondents' Revision 18.0 modified pages submittal (referenced by ENV-RCRA-08-141) on July 8, 2008. Revise the Update to include this submittal in Table 1.1 A (FY07 FFCO and STP Milestones) of Attachment B (page 2) in the CPV.*





**LANL Response**

The FY07 STP update was submitted to NMED on April 25, 2008. NMED directed LANS by letter dated to update tables

**NMED Comment #10**

*The STP FY06 Update Revision 17.0 was approved with modifications by NMED and thus became effective June 24, 2008 (see NMED letter to the Respondents dated June 24, 2008). The Respondents must correct cell "Rev 17.0" in Table A-1 (Summary of Changes to the CPV and the FFCO) in the CPV (page 41) to list the date as "6/24/2008" not "6/26/2008."*

**LANL Response**

The date of the NMED approval letter received by LANS was 6/26/2008, copy attached as Enclosure 2. A second letter dated 6/27/08 from John Kielsing of NMED begins by stating NMED approved the FY06 STP on "June 26, 2008." From documents received from NMED, the approval date of 6/26/2008 appears to be correct and no changes are needed.

**NMED Comment #11**

*The following letters' identification numbers in Table 2.1 B (FY07 Correspondence) in Attachment B (page 3) in the CPV are not applicable to correspondence between the Respondents and NMED for the FY07 STP Update Revision 18.0:*

- a. ENV-RCRA: 07-032 dated 2/23/2007;*
- b. ENV-RCRA: 07-043 dated 3/13/2007;*
- c. ENV-RCRA: 07-235 dated 10/2/2007;*
- d. ENV-RCRA: 07-256 dated 11/13/2007; and*
- e. ENV-RCRA: 07-273 dated 12/11/2007.*

*Delete from the Table the references to these letters which are associated with FY06 STP Update Revision 17.0.*

**LANL Response**

References to the first four letters listed above have been deleted from the table, but not the reference to the fifth letter. The 12/11/2007 letter (ENV-RCRA: 07-273) pertains to the FY06 STP but also to the FY07 STP updates because it requests an extension to submit the FY07 STP update.

**NMED Comment #12**

*The Respondents have not adequately listed in Table 2.1 B all appropriate letters of correspondence sent from the Respondents to NMED during FY07 for Revision 18.0. The Respondents must revise the Table to cite all appropriate correspondence. This includes but is not limited to:*

- a. ENV-RCRA: 08-062 dated 3/20/2008;*
- b. ENV-RCRA: 07-063 dated 4/12/2007;*
- c. ENV-RCRA: 08-063 dated 3/20/2008;*
- d. ENV-RCRA: 08-061 dated 3/20/2008;*



- e. ENV-RCRA-08-091 dated 5/08/2008;
- f. ENV-RCRA-08-055 dated 3/11/2008;
- g. ENV-RCRA-08-079 dated 4/21/2008; and
- h. Email dated 4/1/08 from A. Dye to R. Kay "Subject: Re. Clarification for the Administrative Record.

#### **LANL Response**

The above items, as well as other appropriate correspondence, have been added to the Table 2.1.B

#### **NMED Comment #13**

*Waste treatability group LA-W922 (Noncombustible Debris) in Table 2.1-2 on page 3 of the BV indicates in the column entitled "FY06 Annul Update (m<sup>3</sup>)" a total volume of 0.00 m<sup>3</sup>; this volume is incorrect. The Respondents must revise the Table to accurately list the volume in the FY06 column as 0.0015 m<sup>3</sup> (see STP FY06 Update Revision 17.0 final volume for LA-W922).*

#### **LANL Response**

Background Volume Table 2.1-2 has been revised accordingly.

#### **NMED Comment #14**

*As a reminder, when notices of completion of milestone activities are met, (i.e., when the Respondents complete shipping of existing wastes to an off-site treatment facility, submit documentation assigning waste items to applicable treatability groups, complete assaying, or complete a parallel option (see e.g., Activities 3.1.8(A) and (B) in the CPV)), the Respondents must fulfill all relevant reporting requirements in the FFCO. Section XX(C)(1) states "Respondents shall as expeditiously as possible, but in no event more than ten (10) days after a compliance date, provide notice in writing to NMED of the completion of the activity required to be completed by that compliance date." The Respondents have in the past fulfilled the FFCO milestone activity completion reporting requirement, though not consistently (see the table in NMED's letter dated May 1, 2008 for examples of non-compliance.) Section VI of the FFCO also states "Respondents shall carry out all activities in accordance with the schedules and requirements set forth in the CPV of the STP and this Order" and "[t]he Compliance Plan Volume of the STP provides overall schedules...based on compliance dates as defined in Section IV (Definitions)." Section IV(B) defines a compliance date as "a fixed, firm, and enforceable date on or before which a task must be completed in accordance with the provisions of the STP." The Respondents must submit notices of completion of milestone activities as they are met in accordance with Section VI of the FFCO. Failure to provide a "Notice of Completion of Milestone Activity" letter for the completion of all milestone activities to NMED may result in enforcement action.*

#### **LANL Response**

LANL will comply with the reporting requirements of the FFCO and STP. However, please note that some sections of the LANL CPV have a single "Complete shipping of wastes to an off-site treatment facility, or submit documentation assigning waste items to applicable treatability groups or complete parallel option" milestone compliance date for several treatability groups, such as Section 3.2. LANS staff interpret completion of this activity requires the off-site shipment of all wastes identified under the section.

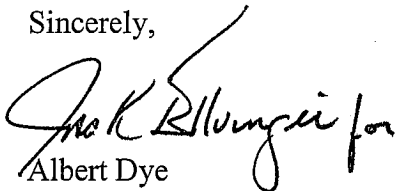


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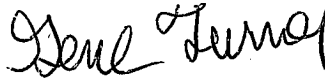
Enclosed are two copies of the revised STP and an electronic copy showing the changes in redline-strikeout format. In order to maintain controlled copies of regulatory documents submitted to NMED and to maintain a clear administrative record, LANS prefers not to submit electronic copies in formats, in particular MS Word documents, which can be altered or edited without our knowledge. As an alternative, enclosed is an electronic copy of the Update in Adobe PDF format

Thank you for your comments and if you have any questions, please call Albert Dye at 667-4715.

Sincerely,



Albert Dye  
STP Project Manager  
Water Quality & RCRA Group  
Los Alamos National Laboratory



Gene Turner  
Environmental Permitting Manager  
Los Alamos Site Office  
National Nuclear Security Administration

AD:GT/lm

Enclosures: a/s

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